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Attorneys for Plaintiff, Bourne Co.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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	:	
BOURNE CO.,	:	
	:	
Plaintiff,	:	
	:	07 Civ. 8580 (DAB)
- against -	:	
	:	DECLARATION
TWENTIETH CENTURY FOX FILM	:	<u>OF KARYN SOROKA</u>
CORPORATION, FOX BROADCASTING	:	
COMPANY, TWENTIETH CENTURY FOX	:	
TELEVISION, INC., TWENTIETH CENTURY FOX	:	
HOME ENTERTAINMENT, INC., FUZZY DOOR	:	
PRODUCTIONS, INC., THE CARTOON	:	
NETWORK, INC., SETH MACFARLANE, WALTER	:	
MURPHY,	:	
	:	
Defendants.	:	
-----	X	

1. I was hired by Bourne Co. ("Bourne") to offer an opinion as to whether external issues, such as negative associations, have an effect on the selection and licensing of and, therefore, the value of songs, both in general and especially in relation to the song "When You Wish Upon a Star" ("Star") and the new lyric created for it entitled "I Need a Jew" ("Jew").

2. In addition the materials discussed below and attached hereto I reviewed a DVD copy The Family Guy Episode "When You Wish Upon a Weinstein," (the "Episode") featuring

the song "I Need a Jew," ("Jew").

3. In my opinion, and based on my experience as a music publisher, artist representative and licensing specialist, negative associations can have a significant effect on the value of songs. My conclusion is supported by (i) real world examples why songs are excluded or not chosen for use; and (ii) the significant efforts made by writers, artists and their representatives to protect the integrity of their songs so that they will not develop negative associations which will decrease their value in the marketplace

4. I have worked in the music business for over twenty-five years and in music publishing for twenty years. Since 1995 I have run Soroka Music Ltd. as a publishing company for a small roster of writers and music publishing companies, for whom I perform copyright administration, license negotiation, royalty tracking and analysis and song exploitation functions. In addition, I do consulting and general business affairs work for law firms, artists, writers and production companies. I also handle music and other rights clearances for a wide variety of projects including television shows, DVD's, commercials, records and books. This has given me experience and perspective from the viewpoints of both licensor and licensee of musical works.

5. From 1993 – 1995 I worked at Sukin Law Group, an entertainment and intellectual property law firm, as a paralegal, where I handled a broad range of matters. Most relevant to the issue at hand, I was the liaison between the heirs of a major songwriter and the publishing company that owns the rights to this writer's songs for all synchronization licensing, which involved evaluating several hundred license requests each year.

6. Other work experience includes: Heart Entertainment Distribution, Inc. in the Legal Department (1992 – 1993), EMI Music Publishing in the Copyright Department (1989 –

1992) and Zomba Enterprises Inc. in the Business Affairs Department (1988 – 1989). In these positions, I was involved in the negotiation and administration of licenses for musical compositions.

7. I have not authored any publications within the preceding ten years.

8. I have not testified as an expert at trial or by deposition within the preceding four years.

How Songs and Songwriters Earn Income

9. Songwriters and their publishers earn income by licensing their songs. There are generally four income streams associated with a song: (1) Mechanical Licenses (“Mechanicals”) -- royalties earned from the sales of various recordings of the song; (2) Synchronization Licenses (“Syncs”) -- income earned for various uses of song in audiovisual works (e.g., films, television shows, commercials, DVDs, etc.); (3) Public Performance Licenses (“Performance Income”) -- income earned from the public performance of song (e.g., in live music venues, television and radio stations, movie theaters outside of the U.S., Internet, etc.) and (4) Print Licenses (“Print”) -- income from sheet music and folios.

10. These income streams are interrelated and success in one stream generally flows to the others. For example, the more successful a recording of a song is, the more Mechanicals it will earn. A successful single will not only earn Mechanicals from the sale of the record, but will also be played on the radio and earn Performance Income. The radio play will, in turn, increase record sales and Mechanicals and provide a demand for printed sheet music. In addition, a successful song is likely to be used in TV shows, films and even commercials,

generating Sync fees. Such additional uses also generate Performance Income when the films or shows are aired on television or on the Internet, which increases exposure to the music and may further increase record sales, continuing the income-generating cycle of the song.

11. If a song becomes successful to the point where it is considered a “standard,” it will be recorded by many different artists for years to come, continuing the cycle of income in all of these areas. If a song, for whatever reason, does not get selected for placement, it will never get a chance to enter into this cycle of income.

12. Income earned from Mechanicals, Public Performance, Syncs and Print uses are how songwriters and music publishers are paid and how they earn their living. Unlike recording artists, who can make money by performing, selling merchandise and making public appearances, the income streams discussed above are the sole source of income for most songwriters and music publishers. Anything that reduces the value of their songs directly affects their income and their ability to support themselves and their families. And, as shown above, a missed opportunity anywhere in the chain can have a domino effect on a songwriter's and a music publisher's income for years to come.

Reasons Why Songs Are Excluded Or Not Chosen For Use

13. One of the major activities of a music publisher is trying to find new avenues through which to exploit its songs, including pitching songs for artists to record on a record and placing songs in films, TV shows and commercials. With respect to the latter, the licensee chooses a song in order to trade on the association the audience has with that song in a way that's relevant to the product being sold or to the nature of the scene in the movie or TV program. While some of these uses may simply fall into place without any specific effort, significant work

does go into placing songs in projects. There are several tip sheets to which music publishers commonly subscribe, including *New On The Charts*, *Row Fax*, *SongLink* and *CueSheet*, which contain listings of artists looking for songs to record and TV shows and films in production, along with scene or story descriptions. Music is submitted for these listings by mail or over the Internet and also in face-to-face meetings with A&R Representatives (the person at a record company who oversees the selection of songs recorded by a musical artist), Music Supervisors (the person who recommends and selects music to be used in films and TV shows) or Ad Agency Representatives (the person who recommends and selects music for television commercials).

14. Why a song isn't selected is almost never overtly made known. I very rarely will receive a phone call from an A&R Representative or a Music Supervisor to tell me that they were considering using a song but then decided not to for a specific reason. Usually the only communication is when a song is selected and a license is being requested.

15. However, tip sheets and face-to-face meetings do provide some clues as to what goes into the decision-making process. Listings in tip sheets, in addition to offering specifics about the required tone, tempo, style, content, etc. will sometimes also tell what is not wanted in a song for consideration. I have seen many listings that specifically state that submissions must be sample-free (i.e., contain no snippets of previously recorded, third-party works) or must contain no foul language or must have only clean lyrics. This makes it clear that no matter how appropriate a song might otherwise be for the potential use, if the content of the song is likely to offend the general public, it simply won't be considered.

16. I have found that Christian record companies have particularly strict guidelines about song selection. I have been in pitch meetings with Christian labels where the A&R

Representative has listened to the song and commented favorably about it but then, upon close reading of the lyrics, found a possible sexual innuendo and immediately said that the song could not be considered. I have also been in discussions regarding the licensing of an entire album by a Christian music distributor, and was advised that sexual content or even a single, mild, curse word on an album almost definitely means it won't be able to get distribution into the Christian market, and especially into Christian bookstores, which are a major source of sales for this market.

17. Possibly one of the most famous recent examples of external factors affecting the value of songs involves the Dixie Chicks, a very popular and multi-Grammy Award winning country music act and "the biggest selling female group in music history." See Chicks In The Line Of Fire" - *Time* - May 21, 2006, attached hereto as Exhibit "A."

18. In 2003, just before the start of the war in Iraq, one of the members of the Dixie Chicks stated on stage, "[j]ust so you know, we're ashamed the President of the United States is from Texas [the home state of the members of the Dixie Chicks]." See Exh. A. As a result of this statement, the Dixie Chicks' music was banned from thousands of country radio stations, which, at the time, was the main radio outlet for the Dixie Chicks' music, directly resulting in lost performance income, lost record sales and, therefore, lost mechanical income and all of the other licensing and income opportunities that typically flow from a hit record.

19. Several years after the incident, there are still country radio stations that will not play the Dixie Chicks' music and record sales and ticket sales for their live concerts are not at the level they used to be before the controversy. See Dixie Chics Soundscan Report February 24, 2006, attached hereto as Exhibit "B," "Dixie Chics Shut up and Sing in Toronto" - MSNBC.com -

September 13, 2006, attached hereto as Exhibit "C" and "NBC, CW Shy Away From Chicks Flick" - E! Online - October 27, 2006, attached hereto as Exhibit "D."

20. It was also reported that in 2006 the NBC and CW television networks refused to air commercials advertising the Dixie Chicks' documentary about this experience, *Dixie Chicks: Shut Up And Sing*, again resulting in lost promotional opportunities and lost sales. See Exhs. C and D.

Efforts Made To Protect The Integrity Of Songs

21. It goes without saying that artists, their managers, songwriters and their publishers know how important it is to protect their reputation and integrity in the eyes of their fans if they want to continue to earn a living in the music business. Two recent examples are:

22. John Mellencamp asking John McCain to stop using Mellencamp's songs, "Pink Houses" and "Our Country" (which were written and performed by John Mellencamp), in his presidential campaign, saying that the situation made him uncomfortable. Mellencamp is a known liberal Democrat, while McCain is a Republican. See "McCain Camp Stops Using Mellencamp Songs" - Associated Press - February 7, 2008, attached hereto as Exhibit "E."

23. Tom Scholz, of the band, Boston, asking Mike Huckabee to stop using Boston's song, "More Than a Feeling" (which was written by Tom Scholz), in his presidential campaign. In Scholz' letter to the Huckabee campaign, he stated that "[t]he unfortunate misconceptions caused by your campaign now live indefinitely on Internet news sites and blog archives . . . I hope you will help undo the damage still being caused by this misleading use of BOSTON and More

Than a Feeling.” See More Than a Feeling Writer Says That Mike Huckabee Has Caused Him Damage” - *Rolling Stone* - February 14, 2008, attached hereto as Exhibit “F.”

24. I have been asked by many clients at various times to avoid certain licensing opportunities or reject license requests because the use of the song conflicted with the values of that client or because they thought the context of the use was not up to their standards or values in some way and would, therefore, diminish the value of the song either monetarily or in the eyes of their fans. Examples include:

25. A client asking me not to submit his song to a major tobacco company for a potential use because of his belief in the dangers of smoking.

26. A license request for the use of a song on a network TV situation comedy that was denied because the songwriter died of a brain tumor and the episode involved a doctor performing a lobotomy while listening to that song, which was considered by the songwriter's representative to be in bad taste.

27. A license request for the use of a song in a syndicated magazine show that was denied because the client thought that the show was “sleazy.”

28. A license request for a major studio motion picture denied because the client didn't want his song connected with the violence and foul language in the script.

29. In a more general way, almost all music publishing and recording contracts, regardless of whether or not they give the writer and/or artist approval or control over potential third-party licensing, provide some sort of approval over the use of their songs or recordings in so-called x-rated films or political advertisements, which is an indication that both sides

acknowledge how detrimental to the value of the songs and the writer's and/or artist's reputations these types of uses can be if they conflict with the values of such writer or artist, and may offend the audience.

“Jew” Likely Had and Will Continue to Have a Negative Effect on the Commercial Value and Licensing Potential Of “Star”

30. “Star” is one the most famous songs of all time and is widely perceived as a classic. The American Film Institute, in recognition of songs that have “captured the nation's heart, echoed beyond the walls of a movie theater, and ultimately stand in our collective memory” included “Star” in its list of the top one hundred movie songs of all time. See AFI’s 100 Years...100 Songs - <http://www.afi.com/tvevents/100years/songs.aspx>.

31. The song’s wholesome expression of eternal hope and reward has led a very wide range of musical artists -- from Rosemary Clooney to *N Sync -- to record it in order to share this message with their fans. See All Music Guide - <http://allmusic.com> and ASCAP <http://www.ascap.com/index.html>

32. I have reviewed the use of “Star” in “Jew” and believe it is both highly controversial and would be viewed as offensive and jolting by a broad cross-section of the viewing and listening public.

33. The mainstream appeal of “Star” is evidenced by the list of over one hundred musical artists who have recorded it (as listed on the *All Music Guide* and ASCAP websites). The mainstream market is where most music sales are made and where most royalties are earned. It is also the market most likely to be taken aback by such a controversial and offensive connection with a song, directly impacting the song’s ability to still speak its message.

34. As such, and applying the principles I have discussed above, it is my opinion that the offensive use “Star” in the Episode has likely had and will continue to have a negative effect on the commercial value and licensing potential of this beloved song.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on the 20 of May, 2008.

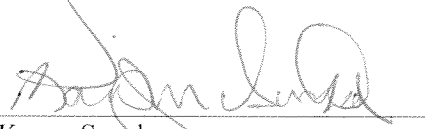
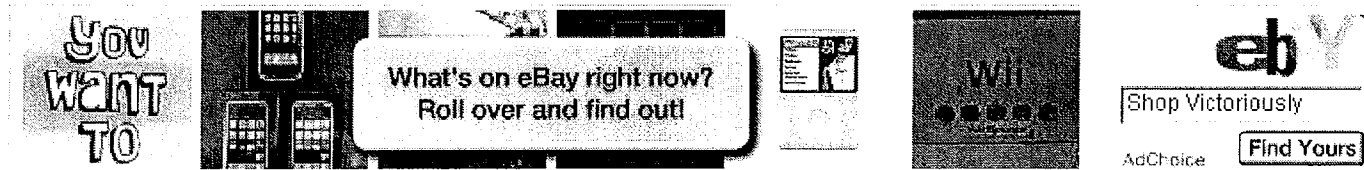

Karyn Soroka

EXHIBIT A


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Sunday, May. 21, 2006

Chicks In the Line of Fire

By Josh Tyrangiel

Natalie Maines is one of those people born middle finger first.

As a high school senior in Lubbock, Texas, she'd skip a class a day in an attempt to prove that because she never got caught and some Mexican students did, the system was racist. After Maines joined the Dixie Chicks, and the Dixie Chicks became the biggest-selling female group in music history--with suspiciously little cash to show for it--she and her bandmates told their record label, Sony, they were declaring themselves free agents. (In the high school that is Nashville, this is way worse than skipping class.) Now that she's truly notorious, having told a London audience in 2003, on the eve of the Iraq war, "Just so you know, we're ashamed the President of the United States is from Texas," Maines has one regret: the apology she offered George W. Bush at the onset of her infamy. "I apologized for disrespecting the office of the President," says Maines. "But I don't feel that way anymore. I don't feel he is owed an respect whatsoever."

A sizable chunk of their once adoring audience feels the same way about the Dixie Chicks. After Maines' pronouncement, which was vigorously seconded by bandmates Martie Maguire and Emily Robison, the group received death threats and was banned by thousands of country radio stations, many of which still have informal bans in place. The Dixie Chicks have mass appeal--you can't sell 10 million copies of two of your three albums without engaging lots of different people--but country radio is an indispensable part of how they reach people. Programmers say that even now a heartfelt apology could help set things right with listeners, but it's not happening. "If people are going to ask me to apologize based on who I am," says Maines, "I don't know what to do about that. I can't change who I am."

As proof, the first single from the Dixie Chicks' new album, *Taking the Long Way* (out May 23), is called *Not Ready to Make Nice*. It is, as one country radio programmer says, "a four-minute f--- you to the format and our listeners

I like the Chicks, and I won't play it." Few other stations are playing Not Ready to Make Nice, and while it has done well on iTunes, it's quite possible that insinuating about their anger at people who were already livid with them and were once their target audience, the Chicks have written their own ticket to the pop-culture glue factory. "I guess if we really cared, we wouldn't have released that single first," says Maguire. "That was just making people mad. But I don't think it was a mistake."

Whether the Dixie Chicks recover their sales luster or not, the choice of single has turned their album release into a referendum. Taking the Long Way's existence is designed to thumb its nose at country's intolerance for ideological hell raising, and buying it or cursing it reveals something about you and your politics--or at least your ability to put a grudge above your listening pleasure. And however you vote, it's tough to deny that by gambling their careers, three Texas women have the biggest balls in American music.

Over lunch in decidedly uncountrified Santa Monica, Calif., where they have lived part time while recording Long Way the Dixie Chicks--in fancy jeans, tank tops and designer sunglasses--seem less like provocateurs than busy moms (they have seven kids in all, ages 1 to 5) amped up by a little free time. In conversation they are loud and unembarrassable, celebrating their lack of boundaries in that escalating, I-can-be-more-blunt-than-you way unique to sisters (which Maguire and Robison are) and women who have shared a tour-bus bathroom. They eagerly discuss the soullessness of Tom Cruise, the creepiness of Charlie Sheen and the price-fixing practices of hair colorists. But sex is the perennial champ, and they are in a constant state of speculation about which of their kids' nannies is most likely to "get some" on tour this summer. "We're all married," says Maguire, "so it's not like we're going to."

One product of their decade together is that the Chicks are loose with pronouns (they use I and we interchangeably) and agree on almost everything, although the ways they agree can be revealing. When the conversation turns to childhood pets and I mention a beloved one-eyed dog, they all make empathetic faces, but Maguire, 36, gets teary, Robison, 33, laughs at her sister's sensitivity, and Maines, 31, says she would have poked around the empty socket "just to check it out." On Iraq, Maguire begins, "The night we sent missiles over ..." while Maines prefers, "When we bombed the s___ out of ..."

In the days preceding the March 2003 U.S. invasion, the Dixie Chicks were touring Europe. They don't subscribe to Foreign Affairs, but they are daily newspaper readers who back up their positions with a solid understanding of current events. It struck them as natural that in front of a largely antiwar crowd in London, Maines would preface Travelin' Soldier, an apolitical ballad about a heartsick Vietnam G.I., with a reference to the world outside the theater. As Maines spoke, though, Robison admits, "I got hot from my head to my toes--just kind of this rush of ' Ohhh, s___.' It wasn't that I didn't agree with 100%; it was just, ' Oh, this is going to stir something up.' "

The celebrity playbook for navigating a scandal is one word long: repent. But apologies are for lapses of character,

not revelations of it, and sensing that they were being asked to apologize for their beliefs as much as their timing, the Chicks decided not to back down. "Natalie knows we could have totally convinced her to apologize," says Maguire. "But the fact is, any one of us could have said what she said." Their demure response to the bans and threats--one of which arrived with the date, time and method of Maines' planned assassination--was to appear nude on the cover of ENTERTAINMENT WEEKLY with slurs (SADDAM'S ANGELS) scrawled on their naked bodies. That did not placate the offended. More fans and friends were lost. Gradually, though, the need for round-the-clock security faded.

Now when they talk about "the Incident," as they unfailingly call it, the Dixie Chicks try to write it off as an absurdity. Maines has powerful gusts of indignation and real disdain for a few right-wing websites and talk-show hosts, but what seems to linger most is disappointment in her pre-controversy self. "I think I'd gotten too comfortable living my life," she says. "I didn't know people thought about us a certain way--that we were Republican and pro-war."

With George Bush the official piñata of the music industry (see chart, above) the Dixie Chicks' ordeal should have cooled by now. "We struggle with that all the time," says Maguire. "Are we picking the scab of something that's already healed? Because we don't know what people are thinking." Radio programmers make it their business to know. "They're still through the floor," says Dale Carter, program director at KFKF in Kansas City, Mo. "There's a technology called the Dial where listeners react to songs, and every time we test the Dixie Chicks ..." Carter makes a noise like a boulder falling from a high cliff. "It's not the music, because we're playing them the hits they used to love. It's something visceral. I've never seen anything like it."

The unwillingness of audiences to forgive the band is inseparable from politics. Market research indicates the average country listener is white, suburban and leans to the right, and they need not lean too far to file away an insult against a wartime President. Still, as the President's support has eroded and growing numbers of Americans (presumably some country-music fans among them) have come to disapprove of both his performance and the decision to go to war, shouldn't there be a proportional feeling of forgiveness toward the Dixie Chicks?

Country Music Television (CMT) has conducted numerous focus groups on the band. "And they're all a great study in the American psyche," says Brian Philips, the channel's executive vice president. "What comes up over and over again is, 'It would have been one thing if they'd said it on American soil, but it's the fact that they said it in Europe that really sets me off.' " There's an accusation of cowardice in there--although Maines insists, "I said it there 'cause that's where I was"--but the way Philips draws out the syllables in Europe is to be believed, there's also a more personal grievance, an uneasy cocktail of resentment and abandonment. As Tim McGraw, one of the few vocal Democrats in country, and the only major artist who would speak on the record about the Dixie Chicks, says,

"You've got to remember this is a family skirmish and it's possible there's more than one thing going on."

Country music has never been particularly classy, which is one of its principal charms. Less charming is its defensiveness about its station. Unlike rock fans, most of whom are attracted to the music's integration of styles, some country fans--particularly those who call up radio stations in a lather--take it upon themselves to patrol a wall of genre purity. Elvis Presley and Johnny Cash got passes because they were *sui generis*. Not so Buck Owens, who in 1965, after a few experimental dalliances, took out an advertisement with a career-saving loyalty oath, "Pledge to Country Music," in the Music City News, promising, "I Shall Sing No Song That Is Not a Country Song." Even now, acts that other listeners reflexively think of as country, from McGraw to Willie Nelson to Shania Twain, are often disparaged for keeping an eye on the Hot 100, playing noncountry songs or showing a little navel. The message from hard-core listeners is, Stay behind the wall.

Early in their careers, the Dixie Chicks did, and they were beloved for it. Maguire and Robison started the group in their teens (Maguire was then at Southern Methodist University; Robison never finished an application to the Air Force Academy) with two singers in their 30s before eventually replacing them in 1995 with Maines, a Berklee College of Music dropout who, at the time, was attending her third college in three years. After a lot of dues paying, the band took over the country charts. Maines has an immensely powerful voice, but she's also capable of barometric emotional adjustments; she almost never oversings and thus sounds great coming out of stereo speakers. Meanwhile, in a medium that values tradition, Maguire and Robison played the most traditional country instruments, fiddle and banjo, and played them well. It didn't hurt either that all three were lookers.

The Chicks have affection for their early work, and songs like *There's Your Trouble* and *Goodbye Earl* will endure, but Maines describes most of it as "amateurish." They didn't write their hits, and the songs they did write were mostly filler. "I never wrote anything from my point of view," Maines says. "Even if it was something that happened to me, I would write it like it was a character and I was telling someone else's story ... That's not very brave."

This is what talented musicians are supposed to do: aspire to get better, braver. But at each step of their evolution, from their feud with Sony (ungrateful!) to the bluegrass album, *Home* (not country enough!), and then, of course, the Incident, the genre's wrath hovered like a jealous boyfriend. "The old audience feels a little betrayed, a little left behind maybe," says CMT's Phillips. That may explain why, as the Chicks and country began their breakup, country fans ran into the arms of brilliant redneck instigator Toby Keith, who displayed a doctored photo of Maines and Saddam Hussein at his concerts.

It also explains why the Dixie Chicks have made such a point of saying good riddance. "I'd rather have a smaller following of really cool people who get it," says Maguire, "who will grow with us as we grow and are fans for life, than people that have us in their five-disc changer with Reba McEntire and Toby Keith. We don't want those kind

of fans. They limit what you can do."

When the group gathered in early 2004 to talk about a new album, none of the three sounded nearly that confident. "You could tell this thing had strengthened them personally but shaken them artistically," says producer Rick Rubin, famous for his work with the Red Hot Chili Peppers and Beastie Boys and on Johnny Cash' s haunting American series. "What turned me on, though, was that even though people were divided over what they said, people cared what they said, and that' s a very strong position for an artist to be in. For the first time the girls, these cute little girls, had a platform."

Rubin took on the project with the hope--he' s way too Zen to make demands--that for the first time in their careers the Dixie Chicks would write all their songs, by themselves and about themselves. As writers they admit they' re prone to laziness, like people at a gym who need a personal trainer to force them to concentrate. Gary Louris of the Jayhawks, blues artist Keb' Mo' and Dan Wilson of Semisonic were brought in to co-write and supply discipline, and the band hunkered down in Los Angeles, where Rubin lives, to begin the long and unglamorous work of crafting songs.

Most of the material that emerged over nearly two years of writing was about marriage and kids and modern life as the Dixie Chicks and lots of other people live it. Oblique references to the controversy made their way into a few songs, so Wilson suggested they write one that addressed the issue head on. "Natalie said, ' Does that mean we' d have to forgive the people that were so evil to us?' And I said, ' Maybe it does,' " Wilson recalls. "And with a little w of her hand, she said, ' Noooooope.' Then the next morning that phrase ' I' m not ready to be nice' appeared."

The song builds to a massive crescendo under lyrics ("It' s too late to make it right/ I probably wouldn' t if I could/ ' Cause I' m mad as hell/ Can' t bring myself to do what it is you think I should") that are explicitly clear. Those who loathe the Dixie Chicks will never get to the end, while those who love them will listen once, say Yeah! and probably not need to go back. It works better as a referendum than as a pop song, but as Robison says, "We wrote it for ourselves, for therapy. Whether or not other people think it was important enough to say, we think it was." Says CMT' s Philips: "I hope the audience let them get this out of their system, because it would be the musical crime of the century if people don' t hear this album all the way through."


That' s a bit much, but you probably won' t hear a better adult pop album this year. Musically, Taking the Long Way is full of swaggering country-tinged rock hooks--like a peak Eagles record, except without the misogyny and drug references and the advice to Take It Easy. Instead the songs aspire to do what the best pop always does, function as a smart expression of its creators' lives while remaining accessible to its listeners' . There are allusions to the recent past--on the jubilant opener The Long Way Around ("It' s been two long years now/ Since the top of the world came crashing down") and the breakup song Everybody Knows ("I swore they' d never see me cry/ You' d never see me

cry")--but they're only obvious if you look for them. Bitter End is a sing-along about fair-weather friends (the group fell out with a few lefty rockers who, amazingly, felt cheated of the nation's opprobrium) and even Lullaby is the rare song about kids well crafted enough that the childless could mistake it for a love song. And as things begin to sag a bit in Long Way's final third, the album delivers ~~knockout~~, So Hard, the first pop song in memory about infertility (Maguire and Robison conceived by in vitro fertilization) and also the catchiest, most complicated love song on the record.

Will anybody buy it? The Dixie Chicks talk about Long Way as the end of their commercial salad days, but they're shrewd enough to know that only suckers choose between art and commerce. "I'm not ready to fly coach," jokes Maguire, and indeed Taking the Long Way could easily sub as the title for their marketing plan. They'll tour starting in July and flog the record on a few select talk shows. "Natalie's new motto is, 'What would Bruce Springsteen do says Robison, laughing. "Not that we're of that caliber, but 'Would Bruce Springsteen do The View?' " They're not doing The View.

Maines says she's not looking for more battles, but she won't shy away from any either. "Everything was so nice and fine and happy for us for the longest time," she says of their pre-Incident days. "It was awesome to feel those feelings again that I felt in high school: to be angry, to be sure that you're right and that the things you do matter. You don't realize that you're not feeling those feelings until you do. And then you realize how much more interesting life is."

With reporting by Andrea Sachs

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EXHIBIT B

Nielsen SoundScan Title Reports

Title Report: Artist History

Title: COLLECTOR'S BOX Artist: DIXIE CHICKS				Release To Date	
Format/Album	Tracks	TW	RTD	Sales	% TOT
Label: MTD		0	0	Total: 328	
Release Date: 10/25/82		0	0	LP: 0	0
Perkins: NAT: 1179		0	0	Cassettes: 0	0
2008 YTD: 0	Weeks Top 200	Rank		CD: 328	99
2008 YTD Digital: 0		LW		DVD: 0	0
		2W		Digital: 0	0

Week Ending: 02/24/2008

BUSINESS CONDITIONS

Album(999)	This Week	% CHG	Last Week	YTD
Total:	7,876	-19%	8,789	84,401
Gain:	2,697	-22%	3,438	23,148
Independent:	570	-7%	610	4,360
Mass Merch:	2,871	-25%	3,823	29,089
Not Traditional:	1,838	-4%	1,978	14,813

Title	Label	Release Date	Format	TW Sales	YTD Sales	2007	2006	RTD Sales
COLLECTOR'S BOX	PID	2008-10-25	Album	0	0	3	0	328
COLLECTOR'S BOX	USD	2008-11-21	Album	1	3	177	81	262
COLLECTOR'S BOX BIOGRAPHY	MURA	2002-11-26	Album	0	0	1	18	156
EVERING WITH THE DIXIE CHICKS	COL	2003-02-11	Video	57	635	5,448	10,708	188,478
FLY	COL	1999-08-31	Album	628	3,723	28,277	58,087	8,270,909
FLY		2004-08-23	Album	0	0	0	0	0
GOODBYE EARL	COL	2000-02-29	Single	0	0	0	0	472,209
HOME		2004-05-23	Album	0	0	0	0	0
HOME		2007-05-20	Album	0	0	0	0	0
HOME	COL	2002-09-27	Album	725	3,282	53,738	73,001	3,858,374
I CAN LOVE YOU BETTER	SWNT	1997-11-17	Single	0	0	0	0	70,004
LANDSLIDE	COL	2003-02-18	Single	4	36	209	132	72,105
LANDSLIDE	PID	2002-12-17	Single	0	0	0	73	977
LANDSLIDE	MSIB	2003-11-10	Single	0	0	0	0	9
LITTLE OL' COWGIRL	CCS	1992-05-22	Album	0	0	1	0	14,461
LIVE WIRE - SINGLE	SNY	2006-05-22	Single	0	0	0	0	0
LONG TIME GONE	COL	2002-09-06	Single	0	3	48	130	138,679
LONG TIME GONE	PID	2003-09-16	Single	0	0	0	4	23
MAXIMUM AUDIO BIOGRAPHY	CHMM	2001-06-05	Album	0	0	0	0	71
MAXIMUM DIXIE CHICKS	PID	2001-04-30	Album	0	0	11	50	397
MAXIMUM DIXIE CHICKS	USD	2006-05-19	Album	1	3	77	21	101
MINIMUM DIXIE CHICKS	PID	1999-12-07	Single	0	0	0	0	71
NOT READY TO MAKE NICE - SINGL	OPEN	2006-06-26	Single	5	45	980	1,342	2,367
NOT READY TO MAKE NICE - SINGL	OPEN	2006-04-24	Single	0	0	0	3	3
READY TO RUN	PNTS	1999-10-19	Single	0	0	0	4	1,677
READY TO RUN	PIP	2000-07-04	Single	0	0	0	0	138
READY TO RUN CD(IMPORT)	PIAN	1999-11-10	Single	0	0	0	6	984
SHOULDN'T A TOLD YOU THAT	CCS	1993-11-02	Album	0	3	3	7	12,337
SING-A-LONG	BCIM	2001-02-06	Album	0	4	206	636	58,335
SING-A-LONG	PMG	1998-08-22	Album	0	3	17	21	20,088
SING-A-LONG-VOL. 2	PMG	2000-09-19	Album	0	0	4	2	6,606
SONGS OF THE DIXIE CHICKS	BCIM	2003-08-15	Single	1	4	33	86	3,213
STAR PROFILE	ODS	2000-03-28	Album	0	0	0	0	18,138
TAKING THE LONG WAY	COL	2006-05-02	Album	1,840	14,629	510,054	1,856,294	2,300,867
THANK HEAVENS FOR DALE EVANS	CCS	1992-05-01	Album	0	0	5	0	5,583
THE LONG WAY AROUND - EP	OPEN	2006-08-28	Album	0	1	9	5	15
THERE'S YOUR CD2-IMPORT	PNTS	1998-07-05	Single	0	0	1	4	450
THERE'S YOUR TROUBLE	MONN	1998-04-14	Single	0	0	0	0	227,778
THERE'S YOUR TROUBLE	PID	1999-08-31	Single	0	0	0	5	1,475
TOP OF THE WORLD TOUR 2003		2004-09-23	Album	0	0	0	0	0
TOP OF THE WORLD TOUR LIVE	COL	2003-11-18	Album	537	4,968	44,636	79,355	1,025,068
TOP OF THE WORLD TOUR LIVE	COL	2003-11-18	Video	46	462	4,802	6,121	149,424
UNAUTHORIZED STORY	ORCH	1999-12-14	Single	0	0	21	48	163
WIDE OPEN SPACES	COL	1998-01-27	Album	952	8,320	66,668	96,533	8,629,960
WIDE OPEN SPACES	COL	1998-07-28	Single	0	0	0	0	82,131
WIDE OPEN SPACES		2004-08-23	Album	0	0	9	1	12
Total				4,602	37,238	712,184	2,162,917	26,358,644
				Single	19	80	1,049	1,996,421
				Video	103	967	10,046	397,902

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EXHIBIT C



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Dixie Chicks 'Shut Up and Sing' in Toronto

Documentary follows group after Natalie Maines' comments about Bush



Aaron Harris / AP

Dixie Chicks, from left: Martie Maguire, Natalie Maines and Emi Robison pose for photographers a press conference for the film "Dixie Chicks - Shut Up and Sing" during the Toronto International Film Festival in Toronto on Sept. 13.

AP Associated Press

updated 5:22 p.m. ET, Wed., Sept. 13, 2006

TORONTO - The Dixie Chicks may be playing to smaller crowds than before the furor over their criticism of President Bush. Yet the trio said Wednesday there's a new sense of loyalty among the fans who do show up.

Slide show



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Ready, set ...

Toronto

Stars and fans come out for the city's International Film Festival.

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"We've basically been playing to about half the audience as on the last tour, but it's a different audience. They just look good," band member Martie Maguire told reporters at the Toronto International Film Festival, where the documentary "Dixie Chicks: Shut Up & Sing" premiered.

"We feel like they're there for a reason," continued singer Natalie Maines, who caused a backlash after she told a concert crowd in 2003 that the group was ashamed Bush came from their home state of Texas.

Break out the Oscar bait
Award season inspires filmmakers to put out their best efforts. By Paige Newman



DreamWorks

Slide show

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Fall Oscar bait
Martin Scorsese's 'The Departed' will take on Clint Eastwood's 'Flags of Our Fathers'

Story continues below •

advertisement



"In the past, I think we always thought, oh, we have a purpose to entertain them and they were there to absorb that and soak it up and be entertaining. They bought their ticket," Maines said. "Now you feel like they feel they have a purpose, supporting free speech and supporting us."

The rough road to free speech

Directed by two-time Academy Award winner Barbara

Kopple ("Harlan County, U.S.A.", "American Dream") and Cecilia Peck, the documentary chronicles Maguire, her sister Emily Robison and Maines' transition from country darlings to bold symbols for freedom of expression. The film opens in theaters in October.

Maines' remark was tossed off as a lighthearted jab at Bush during a London concert, the crowd greeting it with cheers and

 **Slide show**



Launch

Ready, set ...

Toronto

Stars and fans come out for the city's International Film Festival.

applause. But in the United States, the band was assaulted by talk-show conservatives, radio stations dropped their songs, fans boycotted their latest hit album, and protesters rounded up their records in garbage cans.

Their album plummeted on the charts. Demonstrators carried posters of Maines with an "X" over her mouth. One protester in the documentary suggests Maines should be strapped to a bomb and dropped over Baghdad.

While the women do plenty of hand-wringing over how to respond, they do not hesitate to fire back; the documentary includes footage of their photo shoot for an Entertainment Weekly cover in which their bare bodies have been covered with such slogans as "Traitors," "Dixie Sluts" and "Saddam's Angels."

"They're from Texas. They're supposed to be these women that people have put a box around, and here are these incredible all-American girls coming out and making a statement and not backing down from it," Kopple told The Associated Press in an interview.

'It turned us into women'

The film presents the women as an unbreakable sisterhood, rallying together with tenderness, humor and obstinacy. Maguire says she senses Maines blames herself for the group's problems and breaks down in tears as she declares she would give up her career for the singer to be happy and at peace.

Maines and Maguire are on hand for the birth of Robison's twins, and the film captures homespun, amusing portraits of the women with their husbands and children.

The heart of the film is behind-the-scene strategy sessions over how to respond to the fan backlash and what direction their new album and subsequent tour should take.

Through it all, the unity among the women never wavered as they recorded the more rock-edged album "Taking the Long Way," which debuted at No. 1 on the Billboard charts and includes the defiant single "Not Ready to Make Nice."

"It's a very real look at how three women survived that and grew stronger and their bond of friendship deepened, they grew as artists and made an incredible album in the midst of this political firestorm," director Peck said.

The Dixie Chicks said the film captures their growth as performers bonding through adversity, something that would not have happened had their career continued with monster record sales and sellout tours.

"It turned us into women, I think," Maines said. "One thing that surprised me in watching it is watching my own maturing right before my eyes."

"We all say we'd never change a thing," Robison said. "Obviously, things happened that were not fun to go through, but for the most part, when you're coasting along, a tour is going great and you're happy, I don't think you have that kind of ability to really soul search. And going through that gave us that opportunity. It's brought us much closer together."

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NBC, CW Shy Away from Chicks Flick

By Sarah Hall

Fri, 27 Oct 2006 03:43:19 PM PDT

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The Dixie Chicks aren't the only ones not ready to make nice.

Perhaps fearing White House retribution, NBC and the CW have reportedly refused to air ads for the documentary *Dixie Chicks: Shut Up & Sing*, according to the film's distributor, the Weinstein Co.

Harvey Weinstein, who runs the Weinstein Co. along with his brother, Bob, accused both networks of restricting free speech.

According to a Weinstein release, NBC wrote it "cannot accept these spots as they are disparaging to President Bush," while the CW allegedly made the excuse that it did "not have the appropriate programming in which to schedule this spot."

"It's a sad commentary about the level of fear in our society that a movie about a group of courageous entertainers who were blacklisted for exercising their right of free speech is now itself being blacklisted by corporate America," Weinstein said.

However, NBC claimed it was network procedure not to accept ads on issues of public controversy, such as abortion or the war.

According to Alan Wurtzel, head of standards and practices at NBC, when an ad is rejected, prospective advertisers generally try to work with the network on creating an acceptable spot, but the Weinstein Co. never did so.

"There was no attempt to come back and have a conversation," Wurtzel told the AP. "There are times when some advertisers get more publicity for having their ad rejected."

Meanwhile, the CW roundly denied that it had refused to accept the ads in question.

Photos



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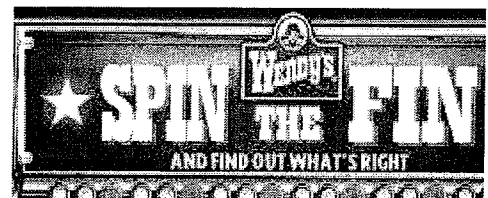
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spokesman Paul McGuire said in a statement. He said the CW had been involved in talks with the Weinstein Co., but they never progressed past where on the schedule the spot would run.

The documentary, which opens Friday in theaters in New York and Los Angeles, explores the controversy that erupted back in 2003 when singer Natalie Maines uttered the now infamous line, "We're ashamed the president of the United States is from Texas."

The incendiary words led to a massive backlash against the group. Country radio stations pulled Dixie Chicks albums out of rotation, protesters burned CDs and posters, and the band members even received death threats.

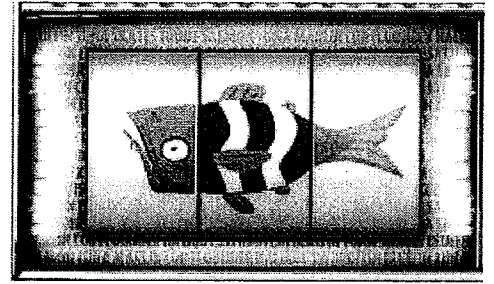
However, Maines, who later apologized for her remark, then rescinded the apology, has said she does not regret expressing her opinion, despite the impact it had on her career.


"I'm glad I used my free speech and spoke out against it. And I think I didn't know, the day after, how glad I was that I said it—but today I have no regrets," she told Chris Matthews on *Hardball* Thursday.

Once the biggest-selling female group in history, the band was forced to rework its North American touring schedule last summer due to lackluster ticket sales across the South and Midwest.

The Chicks ultimately canceled shows in Houston, Memphis, Knoxville and Kansas City, replacing them with dates in Canada.

Shut Up & Sing isn't the first film to have its advertising campaign nixed by a major network. Earlier this week, CNN and NPR refused to air promotions for *Death of a President*, a faux documentary that deals with the fictional assassination of President Bush.



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EXHIBIT E

McCain Camp Stops Using Mellencamp Songs

By AMANDA LEE MYERS – Feb 7, 2008

PHOENIX (AP) — It may be "Our Country," but it's John Mellencamp's song. When the liberal rocker found out his songs were being played at events for Republican John McCain's presidential campaign, Mellencamp's publicist sent a letter that questioned the campaign's playlist.

"Are you sure you want to use his music to promote Senator McCain's efforts?" according to the letter sent to McCain's campaign on Monday. "Logic says that the facts might prove to be an embarrassment, were they to be circulated widely."

McCain campaign spokesman Brian Rogers in Washington, D.C., said Thursday that the songs would no longer be played. He declined to elaborate.

The letter explained Mellencamp was a liberal who had supported Democrat John Edwards, who recently dropped out of the race.

Publicist Bob Merlis said Mellencamp told him that the situation made him uncomfortable and he couldn't imagine McCain would want to be associated with him.

"You know, here's a guy running around saying, 'I'm a true conservative.'" Merlis told The Associated Press. "Well, if you're such a true conservative, why are you playing songs that have a very populist pro-labor message written by a guy who would find no argument if you characterized him as left of center?"

Mellencamp songs that had been played at McCain's events included "Our Country" and "Pink Houses." In "Our Country," Mellencamp sings, "There's room enough here for science to live, and there's room enough here for religion to forgive." In "Pink Houses," he sings about a simple man who "pays for the thrills, the bills and the pills that kill."

His other hits include "Jack and Diane," "Hurts So Good" and "Small Town." Mellencamp is scheduled to be inducted into the Rock and Roll Hall of Fame on March 10 in New York.

EXHIBIT F

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"More Than a Feeling" Writer Says Mike Huckabee Has Caused Him "Damage"

2/14/08, 5:10 pm EST



For the past few months, presidential candidate and amateur bassist Mike Huckabee has been performing Boston's "More Than a Feeling" at campaign events — sometimes even *with* onetime Boston guitarist Barry Goudreau. But now there's a problem: Boston mastermind Tom Scholz, who wrote and played every guitar part on "More Than a Feeling," is an Obama supporter, and he's pissed off (a similar disagreement recently went down between John McCain and John Mellencamp). Click below to read his letter to Huckabee:

Dear Gov. Huckabee:

ADVERTISEMENT

It has come to my attention that your campaign's use of my song More Than a Feeling and my band's name BOSTON has resulted in a great deal of false information, which it now appears may exist permanently on the Internet.

While I'm flattered that you are fond of my song, I'm shocked that you would use it and the name BOSTON to promote yourself without my consent.

Your campaign's use of More Than a Feeling, coupled with the representation of one of your supporters as a member "of BOSTON" clearly implies that the band BOSTON, and specifically one of its members, has endorsed your candidacy, neither of which is true.

I wrote and arranged More Than a Feeling, engineered and produced the recording, and actually played all the guitars on that BOSTON hit as well as most of BOSTON's songs, not the person holding a guitar in your promotion who identified himself as being "of BOSTON." Your claim that this was "the guy who originally did it" is a bit mystifying since he never played on that recording, nor has he been "of BOSTON" since he left my band over a quarter century ago, after performing with us for only three years.

BOSTON has never endorsed a political candidate, and with all due respect, would not start by endorsing a candidate who is the polar opposite of most everything BOSTON stands for. In fact, although I'm impressed you learned my bass guitar part on More Than a Feeling, I am an Obama supporter.

While this may seem like a little thing to you, BOSTON has been my life's work. I hold the trademark to the name and my reputation is inexorably tied to it.

By using my song, and my band's name BOSTON, you have taken something of

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- λ Rock Reality Shows

mine and used it to promote ideas to which I am opposed. In other words, I think I've been ripped off, dude!

The unfortunate misconceptions caused by your campaign now live indefinitely on Internet news sites and blog archives.

As the "straight talk candidate," I hope you will help undo the damage still being caused by this misleading use of BOSTON and More Than a Feeling.

Still evolving,
Tom Scholz for BOSTON

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- λ Mellencamp Asks McCain to Stop Using Tunes
- λ John McCain Will Stop Playing Mellencamp Songs at Rallies

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